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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,857	06/27/2005	Yukihiro Tatsuno	101790.56471US	2294
23911 7590 05/28/2008 CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300				
EXAMINER				
COLLADO, CYNTHIA FRANCISCA				
ART UNIT		PAPER NUMBER		
3618				
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05/28/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/540,857

**Applicant(s)**

TATSUNO ET AL.

**Examiner**

CYNTHIA F. COLLADO

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 9 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The proposed reply filed on December 27 2007 has not been entered because it is unsigned.

Since the above mentioned reply appears to be *bona fide*, applicant is given a TIME PERIOD of **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME LIMIT MAY BE GRANTED UNDER 37 CFR 1.136(a).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102 (b) as being anticipated by Hayashi ET al (US Patent No.6, 112,521). Regarding claim 1, Hayashi discloses a hydraulic pump (fig 2, element 20), a variable displacement hydraulic motor (fig 2, element 24) for traveling driven by pressure oil from the hydraulic pump (fig 2,element 20) also (col 5, lines 61-67), a motor displacement control means for adjusting a displacement of the hydraulic motor in correspondence to a drive pressure at the hydraulic motor (col 5,lines 61-67) also (col 6, lines 1-10), an operating member through which a forward travel

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command and a backward travel command for the vehicle are issued (col 5, lines 61-67) also (col 6, lines 1-20), a control means to be driven in response to an operation of the operating member, for controlling a flow of pressure oil from the hydraulic pump to the hydraulic motor(col 5, lines 61-67) also (col 6, lines 1-20), a reverse operation detection means for detecting a reverse operation of the operating member performed to a reverse side opposite from a direction along which the vehicle is advancing (col 2, lines 50-67), and a cavitation preventing means engaged in operation so as to prevent occurrence of cavitation at the hydraulic motor when the reverse operation at the operating member is detected by the reverse operation detection means(col 2, lines 50-67).

Regarding claim 2, Hayashi the cavitation preventing means is a displacement control circuit that inhibits an increase in the displacement of the hydraulic motor when the reverse operation at the operating member is detected by the reverse operation detection means (col 3, lines 26-53).

Regarding claim 3, Hayashi the cavitation preventing means is an operation signal control circuit that blocks an operation signal from the operating member when the reverse operation at the operating member is detected by the reverse operation detection means (col 2, lines 50-61).

Regarding claim 4, Hayashi the cavitation preventing means is a cutoff control circuit

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that cuts off the flow of pressure oil from the hydraulic pump to the hydraulic motor when the reverse operation at the operating member is detected by the reverse operation detection means(col 3, lines 26-53).

Regarding claim 5, Hayashi the cavitation preventing means is a motor-displacement-control-drive-pressure-reducing circuit that reduces the drive pressure based upon which the displacement of the hydraulic motor is controlled when the reverse operation at the operating member is detected by the reverse operation detection means(col 3, lines 26-53).

Regarding claim 6, Hayashi a rotation speed detection means for detecting a physical quantity having a correlation to a rotation speed of the hydraulic motor, wherein: the cavitation preventing means engages in operation so as to prevent occurrence of cavitation when the physical quantity detected by the rotation speed detection means exceeds a reference value and the reverse operation at the operating member is detected by the reverse operation detection means (col 1, lines 48-67).

Regarding claim 7, Hayashi the physical quantity is a vehicle speed and the reference value is set to a smaller value as a gear ratio increases (col 10.lines 15-31).

Regarding claim 8, Hayashi an inertial force detection means for detecting an inertial

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force applied to the vehicle, wherein the reference value is set to a smaller value as a greater inertial force is detected (col 13, lines 13-38).

***Allowable Subject Matter***

Claims 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

This action is being made non-final based on the fact that due to a typographical error inadvertently indicating that claim 8 (rather than 9-10) was allowable if rewritten in independent form including all limitations of the base claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CYNTHIA F. COLLADO whose telephone number is (571)272-8315. The examiner can normally be reached on mon-fri 6-2.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (571)2726914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher P Ellis/  
Supervisory Patent Examiner, Art  
Unit 3618

CFC  
/Cynthia F Collado/  
Examiner, Art Unit 3618